

No. 15250

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United States  
Court of Appeals  
for the Ninth Circuit

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THOMAS F. DORAN, ETHEL M. DORAN,  
ONEY S. RIGGS, DOROTHY F. RIGGS, IDA  
BEE MacDONALD, CLARA NIEMAN, GUS  
H. NIEMAN and JOHN W. MacDONALD,  
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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Transcript of Record

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Petitions to Review Decisions of The Tax Court of the  
United States

FILED

DEC 11 1956

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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Attorneys for Petitioners on Review.

CHARLES K. RICE,

Assistant United States Attorney General,

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Attorney, Department of Justice,

Washington, 25, D. C.,

Attorneys for Respondents on Review.





## APPEARANCES

For Petitioner:

R. E. LOWE, Esq.

For Respondent:

GORDON N. CROMWELL, Esq.

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Docket No. 51871

THOMAS F. DORAN, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## DOCKET ENTRIES

1954

Feb. 1—Petition received and filed. Taxpayer notified. Fee paid.

Feb. 2—Copy of petition served on General Counsel.

Feb. 1—Request for Circuit hearing in Spokane, Washington, filed by taxpayer. 2/4/54, granted.

Mar. 29—Answer to petition filed by General Counsel.

Mar. 31—Copy of answer served on taxpayer, Spokane.

1955

Mar. 10—Hearing set June 6, 1955, Spokane, Washington.

1955

- Jun. 6—Hearing had before Judge Withey on the merits, petitioner's motion to consolidate with dockets 51872, 51873, 51874, 51877 to 51880, inclusive, for hearing. Granted. Submitted on Stipulation of Facts. Motion to consolidate filed and served at hearing. Stipulation of Facts filed at hearing. Briefs due 8/5/55; replies due 9/6/55.
- Jun. 20—Transcript of Hearing 6/6/55 filed.
- Jul. 22—Motion for extension of thirty days to file brief filed by taxpayer. 7/25/55, granted to Sept. 6, 1955.
- Aug. 29—Brief filed by General Counsel. 9/8/55, copy served.
- Aug. 29—Joint motion for leave to file supplemental stipulation of facts, stipulation lodged, filed. 8/30/55, granted.
- Sep. 8—Brief filed by taxpayer. Copy served.
- Sep. 20—Motion for extension to Oct. 15, 1955, to file reply brief filed by taxpayer. 9/21/55, granted.
- Oct. 10—Reply brief filed by taxpayer. Copy served.

1956

- May 18—Memorandum findings of fact and opinion filed. Withey J. Decision will be entered for respondent. Served 5/22/56.
- May 18—Decision entered, Judge Withey, Div. 4. Served 5/22/56.

1956

Jul. 23—Petition for review by U. S. Court of Appeals, Ninth Circuit, filed by petitioner.

Jul. 23—Statement of Points filed by petitioner.

Jul. 26—Proof of service of petition for review and statement of points filed.

Aug. 2—Designation of Contents of Record on Review with proof of service thereon filed.

Aug. 2—Designation of additional portions of record on review with proof of service thereon filed.

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[Title of Tax Court and Cause No. 51871.]

## PETITION TO REDETERMINE DEFICIENCY

The above named Thomas F. Doran hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated November 10, 1953 (Bureau symbols AP:AA:90D:TRB:EEH), and as a basis for this proceeding alleges as follows:

1. The Notice of Deficiency was mailed to petitioner on November 10, 1953.

2. The petitioner is an individual with his residence at South 2824 Wall Street, Spokane, Washington. The return for the period involved was filed with the Collector of the District of Washington at Tacoma, Washington.

3. The amount of deficiency tax assessed is

\$884.56 and the deficiency is for income tax for the calendar year 1947. All of this amount is in controversy.

4. A copy of the Notice of Deficiency is attached hereto and marked Exhibit "A".

5. The determination of the tax set forth in said Notice of Deficiency is based upon the following errors:

(A) In determining that the petitioner realized income as his community one-half in the sum of \$884.56.

(B) In determining that any shares of Inland Motor Freight purchased by the Trustees under the Trust Agreement dated July 10, 1943, constituted income to the petitioner.

(C) In determining that the proceeds of the life insurance policy upon the life of Grover C. Ealy are taxable to the petitioner's income.

6. The facts upon which the petitioner relies in sustaining these assignments of error are as follows:

(a) Long prior to July 10, 1943, there existed between all of the stockholders of Inland Motor Freight an agreement by the terms of which, in substance, each shareholder agreed:

(1) That he would not sell his stock to any person without first offering the same to the other shareholders.

(2) That in case of the death of one of the shareholders, the surviving shareholders should have a right to purchase his stock in Inland Motor Freight.

(3) That under date of July 10, 1943, the various stockholders of Inland Motor Freight entered into an agreement to the effect that life insurance upon the lives of certain named persons should be procured by named trustees, to-wit, G. C. Ealy, Gus H. Nieman and O. S. Riggs, and that upon the death of either of the insured persons, the common stockholders should participate in the proceeds of said insurance, and

“said proceeds shall be distributed by said trustees to the then common stockholders as in this paragraph provided, said proceeds when distributed may be used by the then stockholders to purchase the common stock in the company held by the one so deceased at the time of his death.”

(4) That insurance was procured upon the life of G. C. Ealy by the three named trustees, as well as upon the other persons. Ealy passed away on March 19, 1947. The proceeds of the policy on his life were paid to the two surviving trustees and a successor trustee.

(5) Certain of the surviving stockholders purchased from the executor of the Grover C. Ealy Estate all of his shares in Inland Motor Freight. The proceeds of the insurance policy were used to apply on the purchase. These proceeds are taxed by the Commissioner pursuant to the 90-Day Letter.

Wherefore the petitioner prays that this court



may hear the proceeding and determine there is no deficiency due from the petitioner for the year 1947.

/s/ THOMAS F. DORAN,  
Petitioner

/s/ R. E. LOWE,  
Counsel for Petitioner

Of Counsel:

PAINE, LOWE, COFFIN, ENNIS &  
HERMAN,

Duly Verified.

### EXHIBIT "A"

Regional

123 U. S. Court House, Seattle 4, Washington

Ap:AA:90D:TRB:EEH

Nov. 10, 1953

Mr. Thomas F. Doran,  
S. 2824 Wall Street, Spokane, Washington

Dear Mr. Doran:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1947, discloses a deficiency of \$884.56 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address,

Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia, in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to Assistant Regional Commissioner, Appellate, 123 United States Court House, Seattle 4, Washington. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

T. Coleman Andrews,

Commissioner of Internal Revenue

/s/ By James E. Westin,

Associate Chief, Appellate Division

Encl.: Statement, Form 1276, Agreement Form.

EEHarney:bc

Ap:AA:90D:TRB:EEH

## STATEMENT

Mr. Thomas F. Doran, S. 2824 Wall Street, Spokane, Washington.

Tax liability for the taxable year ended December 31, 1947.

Income Tax: Deficiency \$884.56.

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated July 30, 1952; to your protest dated November 18, 1952; and to the statements made at the conference held on August 17, 1953.

A copy of this letter and statement has been mailed to your representative, Mr. R. E. Lowe, 605 Spokane and Eastern Building, Spokane, Washington, in accordance with the authority contained in the power of attorney executed by you.

## Adjustments to Income

Adjusted gross income as disclosed by return,	
Form 1040 .....	\$4,200.00
Unallowable deductions and additional income:	
(a) Other income .....	3,758.11
	<hr/>
Total.....	\$7,958.11
Nontaxable income and additional deductions:	
(b) Standard deduction .....	500.00
	<hr/>
Net income adjusted .....	\$7,458.11

## Explanation of Adjustments

(a) It has been determined that you and your



wife, Ethel M. Doran, realized income of \$7,516.22 as the result of the purchase for your account of shares in Inland Motor Freight, a corporation, by Trustees under a Trust Agreement dated July 10, 1943. Since you reported no income from the above source, net income as reported on your return is increased by your community one-half of the above additional income of \$7,516.22, or \$3,758.11.

(b) The standard deduction of \$500.00 is allowed in the computation of your net income as adjusted herein.

Computation of Income Tax

Net income adjusted .....	\$7,458.11
Less: Exemptions .....	1,000.00
<hr/>	
Normal tax and surtax net income.....	\$6,458.11
Tentative normal tax and surtax.....	\$1,497.43
Less: 5 per cent of tentative tax.....	74.87
<hr/>	
Income tax liability .....	\$1,422.56
Income tax liability disclosed by return,	
Original, Account No. 7278130 .....	538.00
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Deficiency in income tax .....	\$ 884.56

[Endorsed]: T.C.U.S. Filed February 1, 1954.

[Title of Tax Court and Cause No. 51871.]

ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, and for answer to

the petition filed herein, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition except that it is denied that the amount of the deficiency determined for the calendar year 1947 was assessed.

4. Admits the allegations contained in paragraph 4 of the petition.

5. (A) to (C), inclusive. Denies that the Commissioner erred in his determination of the deficiency as shown by the notice of deficiency from which the petitioner's appeal is taken. Specifically denies that he erred in the manner and form as alleged in paragraphs 5(A) to (C), inclusive, of the petition.

6. (a)(1) to (5), inclusive. Denies the allegations contained in paragraph 6(a) and in subparagraphs (1) to (5), inclusive, thereof.

7. Denies generally and specifically each and every material allegation contained in the petition, not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's ap-

peal be denied and that the Commissioner's determination of deficiency be approved.

/s/ DANIEL A. TAYLOR, U.H.P.

Chief Counsel, Internal Revenue  
Service

Of Counsel:

Melvin L. Sears, Regional Counsel,  
Gordon N. Cromwell, Special Attorney,  
Internal Revenue Service

[Endorsed]: T.C.U.S. Filed March 29, 1954.

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The Tax Court of the United States

No. 51871, Thomas F. Doran; No. 51872, Ethel M. Doran; No. 51873, Oney S. Riggs; No. 51874, Dorothy F. Riggs; No. 51877, Ida Bee MacDonald; No. 51878, Clara Nieman; No. 51879, Gus H. Nieman; No. 51880, John W. MacDonald, Petitioners, vs. Commissioner of Internal Revenue, Respondent.

### MOTION TO CONSOLIDATE

Come Now the petitioners and move that the above-named proceedings be consolidated for hearing on the Tax Court calendar commencing at Spokane, Washington, on June 6, 1955.

/s/ R. E. LOWE,

Counsel for Petitioners

No objection:

/s/ JOHN POTTS BARNES,  
Chief Counsel, Internal Revenue  
Service,  
Counsel for Respondent

[Endorsed]: T.C.U.S. Granted June 6, 1955. G.  
G. Withey, Judge. Filed June 6, 1955.

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[Title of Tax Court and Causes.]

### STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, by the respective attorneys of record, that the following facts are true, and that the same may be considered and accepted by the Court as offered in evidence by the parties in these proceedings; provided, however, that the stipulation shall be without prejudice to the right of any of the said parties to introduce other and further evidence.

1. Pursuant to petitioners' motion duly filed with the Court the above-named cases are consolidated for hearing.

2. The tax year involved in each case is 1947. Income tax deficiencies were determined by the respondent as follows:

	Deficiency - 1947
Thomas F. Doran	\$ 884.56
Ethel M. Doran	922.06
Oney S. Riggs	854.74

Deficiency - 1947	
Dorothy F. Riggs	854.74
Ida B. MacDonald	984.25
Clara Nieman	5,582.16
Gus H. Nieman	5,491.91
John W. MacDonald	984.25
<hr/>	
\$16,558.67	

3. At all times material herein the following petitioners were and still are husband and wife; Thomas F. Doran (sometimes hereinafter referred to as T. F. Doran) and Ethel M. Doran; Oney S. Riggs (sometimes hereinafter referred to as O. S. Riggs) and Dorothy F. Riggs; John W. MacDonald and Ida B. MacDonald; Gus H. Nieman (sometimes hereinafter referred to as Gustav Heinrich Nieman) and Clara Nieman.

4. Each petitioner filed his or her separate individual income tax return for the taxable year 1947 with the Collector of Internal Revenue at Tacoma, Washington. Attached hereto and made a part of this stipulation as joint exhibits are the following copies of petitioners' income tax returns for the taxable year 1947:

Joint Exhibit 1-A—1947 return of Thomas F. Doran.

Joint Exhibit 2-B—1947 return of Ethel M. Doran.

Joint Exhibit 3-C—1947 return of Oney S. Riggs.

Joint Exhibit 4-D—1947 return of Dorothy F. Riggs.



Joint Exhibit 5-E—1947 return of Ida Bee MacDonald.

Joint Exhibit 6-F—1947 return of Clara Nieman.

Joint Exhibit 7-G—1947 return of Gus H. Nieman.

Joint Exhibit 8-H—1947 return of John W. MacDonald.

5. At all times material herein, Inland Motor Freight was a Washington corporation, with its principal office at Spokane, Washington, and was engaged in the business of a public carrier of freight and commodities under permits issued by the Interstate Commerce Commission and the regulatory bodies having charge of public carriers in the States of Washington, Oregon, Idaho and Montana.

6. During all of the year 1943 and for some time prior thereto, and thereafter until March 19, 1947, the petitioners Thomas F. Doran, Oney S. Riggs, Gus H. Nieman and John W. MacDonald, and one Grover C. Ealy (sometimes hereinafter referred to as G. C. Ealy) now deceased, and G. B. Halverson, were stockholders of Inland Motor Freight. At all times material herein, Gus H. Nieman, Oney S. Riggs, Thomas F. Doran, J. W. MacDonald, G. B. Halverson, and Grover C. Ealy, until his death on March 19, 1947, were actively engaged in the management and operation of Inland Motor Freight in various capacities and were members of the Board of Directors. In addition thereto, there were certain stockholders, to-wit: C. R. Webber and his wife, Esther L. Webber, Mae B. Edwards and Mary Lowry.

7. For some time prior to July 3, 1943 there has been informal discussions among the stockholders of Inland Motor Freight concerning some arrangement whereby funds could be accumulated so that, in case of the death of a stockholder, the survivors could purchase stock of the one deceased.

8. At a stockholders meeting on July 3, 1943, at which all stockholders were present, a certain resolution was adopted. The minutes of said meeting annexed and marked petitioners' Exhibit 9 are made a part of this stipulation.

9. On July 14, 1943 application was made by Inland Motor Freight a corporation to Sun Life Assurance Company of Canada, for the issuance of a policy upon the life of Grover C. Ealy in the sum of \$50,000, which application requested that the policy should be, by its terms, payable upon death to the Estate of Grover C. Ealy.

Similar applications were made for life insurance policies on the lives of the other officers and directors of the company.

10. The Sun Life Assurance Company of Canada declined to so issue the policies, but the Sun Life Assurance Company of Canada did issue policies on said applications providing the proceeds should be payable to Inland Motor Freight, a corporation, and, particularly, this was true of the policy issued on the life of Grover C. Ealy.

11. Said policies were sent to the agency of the Sun Life Assurance Company of Spokane and ten-

dered to Inland Motor Freight but the officers of Inland Motor Freight refused to accept said policies in this form.

12. On October 25, 1943, a special meeting of the Board of Directors was held, at which all were present, and Exhibit 10 attached hereto is a copy of the minutes of said meeting.

13. The document dated July 10, 1943 attached to Exhibit 10, was signed by all the stockholders, except Clifford Halverson and wife, a copy of which document entitled "Inland Motor Freight Stockholders Insurance Agreement" is attached hereto and marked Exhibit 11. Exhibit 11 was signed in November 1943.

14. Thereafter, application was made by "Grover C. Ealy, Gustav Heinrich Nieman and Oney S. Riggs, as trustees under Trust Agreement dated July 10, 1943" to Sun Life Assurance Company of Canada, for life insurance upon the life of Grover C. Ealy. This application was dated December 20, 1943 and a copy of the same is annexed to the policy attached hereto marked Exhibit 12. Similar applications were made for the other persons whose lives were to be insured under the agreement.

15. The Sun Life Assurance Company of Canada issued the policies, the proceeds of which are in question, and delivered the same to the three applicant trustees and beneficiaries. Thereafter in 1945 Grover C. Ealy purchased the stock of Inland Motor Freight owned by Mae B. Edwards and Mary Lowry.



16. Grover C. Ealy passed away on March 19, 1947 and upon his death, Gus H. Nieman, one of the petitioners herein, was elected president of the corporation. J. W. MacDonald and Thomas F. Doran were elected vice-presidents and became trustees under such trust agreement. These three, together with Oney S. Riggs, as such trustee, filed claim with Sun Life Assurance Company of Canada for the proceeds of the policy upon the life of Grover C. Ealy, and a check was delivered by Sun Life Assurance Company of Canada to the four trustees. Said check is Exhibit 13.

17. James A. Brown, as executor under the last will of Grover C. Ealy, entered into negotiations with the remaining stockholders executing Exhibit 11 for the purchase of stock belonging to the estate of Grover C. Ealy, deceased. These negotiations resulted in a contract for the sale by executor Brown to Gus H. Nieman, Thomas F. Doran, Oney S. Riggs, John W. MacDonald and G. B. Halverson, which contract was in writing and is annexed hereto and marked Exhibit 14. The certificates were assigned in blank by James A. Brown as executor and deposited with The Old National Bank of Spokane, in Spokane, Washington, to be delivered upon full payment of the purchase price. The initial payment referred to in said Exhibit 14 was the check which was delivered to James A. Brown, as executor, upon the contract being signed. As members of the marital community, consisting of the various petitioning husbands and wives, the communities are bound by

and receive the benefit of the contract annexed as Exhibit 14 and since in Washington income is split between the respective husband and wives, deficiencies are claimed by respondent against wives as well as husbands.

18. The initial premium payment upon the policy issued, covering the life of Grover C. Ealy was paid by said Inland Motor Freight directly to Sun Life Insurance Company of Canada, the insurer, and was charged by Inland Motor Freight against surplus, and premiums were similarly paid and charged thereafter every year until the death of Grover C. Ealy. In making income tax returns the company did not at any time deduct or claim deduction for the payment of said premiums.

19. The premiums upon the policy of insurance covering the life of Grover C. Ealy, paid by Inland Motor Freight, were not charged to Grover C. Ealy on the books of the company. At no time were such premiums reported by any shareholder as dividends.

20. The corporation did not at any time receive or claim dividends on the said insurance policies and did not at any time carry the said policies on its books as an asset either as to accrued dividends or cash surrender value and did not at any time receive any proceeds of the policy upon the life of Grover C. Ealy.

21. James A. Brown, the attorney who drafted Exhibits 9, 10, 11 and 14 died in March 1950.

22. All exhibits referred to in this stipulation are to be considered a part of the stipulated facts.

/s/ R. E. LOWE,

Counsel for Petitioners

/s/ JOHN POTTS BARNES,

Counsel for Respondent

[Endorsed]: T.C.U.S. June 6, 1955.

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[Title of Tax Court and Causes.]

### SUPPLEMENTAL STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys of record, that the following paragraph numbered "20" may be considered and accepted by the Court as offered in evidence by the parties in these proceedings, in lieu of paragraph 20 of the Stipulation of Facts presented at the hearing of these proceedings before Judge Graydon G. Withey, in Spokane, Washington, on June 6, 1955:

20. The corporation did not at any time receive or claim dividends on the said insurance policies and did not at any time carry the said policies on its books as an asset either as to accrued dividends or cash surrender value.

/s/ R. E. LOWE,

Counsel for Petitioners

/s/ JOHN POTTS BARNES,

Chief Counsel, Internal Revenue  
Service,

Counsel for Respondent

EXHIBIT No. 9

“Special Meeting of the Stockholders of Inland Motor Freight was duly called and held in the office of the Company in Spokane, Washington on Saturday, July 3, 1943, at two o’clock P.M. Pursuant to said call all stockholders were present in person.

“The meeting was called to order by G. C. Ealy, he presiding—

“All stockholders were present and consented that at this special meeting the proposition of purchasing life insurance on certain stockholders from the Sun Life Insurance Company might be considered and the following plan was placed before the stockholders:

“That the Company would purchase and pay for insurance on six of its stockholders in the amounts set opposite their names, as follows:

G. C. Ealy	\$50,000.00
G. H. Nieman	35,000.00
Oney S. Riggs	10,000.00
J. W. MacDonald	10,000.00
T. F. Doran	10,000.00
G. B. Halverson	10,000.00

“It was regularly moved and seconded that a contract be worked out among the stockholders whereby this insurance should be purchased, the premiums to be paid by the company and upon the death of either of those insured, the face of the

policy on the one so deceased should be paid to the company and disbursed by the company to all of the stockholders as a special dividend and the proceeds received by said stockholders as a special dividend to be used by them to apply on the purchase of the stock in the Inland Motor Freight of the one so deceased.

“The motion was unanimously carried.

“There being no further business to come before the meeting, it was adjourned.

/s/ Grover C. Ealy, Chairman

Attest: /s/ Oney S. Riggs, Secretary

#### EXHIBIT No. 10

Minutes of a Special Meeting of the Board of Directors of Inland Motor Freight a corporation

A special meeting of the directors of Inland Motor Freight, a corporation, was held at the office of the company at Spokane, Washington, on Monday, October 25, 1943, all directors being present namely: G. C. Ealy, Gus H. Nieman, O. S. Riggs, Thos. F. Doran, J. W. Macdonald, and G. B. Halverson, and each expressly waiving the time, place and manner of calling the meeting and consenting to the transaction of business, the meeting was called to order by Mr. Ealy, he presiding.

Mr. Ealy said the meeting had been called for the purpose of considering and in fact authorizing the parties entering into that certain contract dated the 10th day of July, 1943, wherein it was agreed by all of the stockholders of Inland Motor Freight that the



company should purchase life insurance on the following of its stockholders and in the amounts set opposite their name, to-wit:

G. C. Ealy	\$50,000.00
Gus H. Nieman	35,000.00
O. S. Riggs	10,000.00
J. W. Macdonald	10,000.00
Thomas F. Doran	10,000.00
G. B. Halverson	10,000.00

and that this company should pay the premiums thereon. The proceeds of said policies in the event of the death of either of the insured to be paid according to the terms of said contract. A copy of said contract being hereto attached and made a part hereof.

After some consideration and discussion, it was upon motion duly made, seconded and carried unanimously agreed that it would be for the best interest of the company for said stockholders to enter into said contract and for the company to purchase said insurance.

There being no further business to come before the meeting, it was adjourned.

G. C. Ealy, Director  
Gus Nieman, Director  
Oney S. Riggs, Director  
Thomas F. Doran, Director  
J. W. Macdonald, Director  
G. B. Halverson, Director

[Note: The balance of Exhibit 10 is the same as Exhibit 11 which follows.]

## EXHIBIT No. 11

Inland Motor Freight Stockholders Insurance  
Agreement

This Agreement made and entered into this 10th day of July, 1943, by and between G. C. Ealy and Agnes M. Ealy, his wife; Ella B. Goodrich, a widow; G. B. Halverson and Doris M. Halverson, his wife; Gus H. Nieman and Clara Nieman, his wife; J. W. Macdonald and Ida Bee Macdonald, his wife; Oney S. Riggs and Dorothy F. Riggs, his wife; T. F. Doran and Ethel M. Doran, his wife; C. R. Webber and Esther L. Webber, his wife; Mae B. Edwards, a widow; and Mary Lowry, dealing with her separate property, they being all of the common stockholders of Inland Motor Freight, a corporation, and

Whereas, pursuant to discussions had at a special meeting of the stockholders of Inland Motor Freight held July 3rd, 1943, at the office of the company in Spokane, Washington, at which meeting all common stockholders were present in person it is considered advisable and for the benefit of each common stockholder that life insurance be purchased on the lives of certain members of the present board of directors as herein contained, and,

Whereas, it is the intention that the Inland Motor Freight, a corporation, shall pay the premiums on said policies, and

Whereas, it is the intention that trustees shall be appointed for the purpose of making applications

for and obtaining said policies and that said trustees when selected and appointed as herein contained shall be named as beneficiary in each of said policies and upon the death of either of the insured, the proceeds of said policy on the life of the one so deceased shall be paid to said trustees and disbursed by them as herein contained.

It Is, Therefore, Hereby Mutually Agreed that the trustees for the purpose of carrying out this agreement, shall be composed of the President, Vice-President, Secretary and Treasurer of Inland Motor Freight, who are at present: G. C. Ealy, Gus H. Nieman, and O. S. Riggs, and upon either of the aforesaid persons ceasing to hold one of said offices, he shall immediately cease to be a trustee as herein defined and his successor in office shall automatically become a member of said trustees with all of the powers and authority vested in the present board.

Said trustees shall have authority to apply for and purchase the life insurance herein mentioned with themselves and their successors in office named as beneficiaries in said policies as trustees, etc., and upon the death of either of the insured shall collect the proceeds in the policy upon the life of the one so deceased, and shall distribute the same to the then common stockholders of record as follows:

Each common stockholder shall participate in the proceeds of the policy on the life of the one so deceased in the same ratio that his or her common



stock holdings in the Inland Motor Freight, a corporation, bears to the other common stockholders at the time of the death of the one so deceased, said proceeds shall be distributed by said trustees to the then common stockholders as in this paragraph provided, said proceeds when distributed may be used by the then stockholders to purchase the common stock in the company held by the one so deceased at the time of his death.

Said trustees shall have the right to surrender and cancel any policy when the person on whose life it is written is no longer a director or employee of Inland Motor Freight.

Should policies or either of them be surrendered and cancelled prior to the death of the insured, then the cash surrender value shall be paid to all of the common stockholders pro rata as herein contained.

Each stockholder and his wife, if married, agree that upon his or her death the common stock owned by said stockholder so deceased in the Inland Motor Freight, a corporation, shall be forthwith offered to the remaining stockholders in said company at its then fair value and said stockholders shall have a period of ninety days from the date of said offer in which to purchase the same at said price. By "fair value" is meant "book value", less any consideration for good will, certificates and permits from all regulatory bodies. If the remaining stockholders shall not purchase said stock within said ninety-day period at said price, the heirs and legal repre-

sentatives of the one so deceased shall be under no further obligation to said stockholders insofar as the sale of said stock is concerned.

The insurance referred to herein, which said trustees are authorized and directed to purchase is as follows, to-wit:

G. C. Ealy	\$50,000.00
Gus H. Nieman	35,000.00
O. S. Riggs	10,000.00
J. W. MacDonald	10,000.00
Thomas F. Doran	10,000.00
G. B. Halverson	10,000.00

It Is Further Agreed that said insurance shall be all purchased from the Sun Life Insurance Company of Canada.

This contract shall be binding upon the parties hereto and each of them, their heirs, executors, administrators and assigns and shall be and remain in full force and effect so long as said insurance policies, or either of them, are in effect.

In Witness Whereof we have hereunto set our hands this day and year first above written.

Grover C. Ealy  
Agnes M. Ealy, his wife  
May B. Edwards, a widow  
Gus H. Nieman  
Clara Nieman, his wife  
G. B. Halverson  
Doris M. Halverson, his wife

Oney S. Riggs

Dorothy F. Riggs, his wife

Thomas F. Doran

Ethel M. Doran, his wife

J. W. Macdonald

Ida Bee Macdonald, his wife

Ella B. Goodrich, a widow

.....

dealing with her separate  
property

It Is Expressly Agreed that Mary Lowry signs the aforesaid contract and agrees to every part of said contract, save and except that certain paragraph beginning at the last line at the bottom of page 2, and ending with the words "stock is concerned" being the twelfth line on page 3 of said contract. Mary Lowry does not consent to the conditions in said paragraph as mentioned and is not bound thereby.

Mary Lowry

EXHIBIT No. 12

Sun Life Assurance Company of Canada

Head Office: Montreal

No. 1693662

Age 56 admitted rated at 59

Hereby Assures the Life of Grover C. Ealy (the assured) subject to the War and Aviation Provision contained herein in the sum of Fifty Thousand Dollars (the sum assured), which shall be payable at

the Company's office in the city of Spokane, Washington to Grover C. Ealy, Gustav Heinrich Nieman and Oney S. Riggs, (the owners) as Trustees under Trust Agreement dated the tenth day of July 1943 without obligation on the part of the Sun Life Assurance Company of Canada to see to the application of the proceeds of the policy, on receipt at its Head Office in Montreal of due proof of the death of the assured.

This policy is issued in consideration of the application therefor and of a premium of Three thousand four hundred and sixty-seven 50/100 Dollars to be paid to the Company on the fourteenth day of July 1943 and of the payment to it of a like amount yearly thereafter on the fourteenth day of July in every year during the lifetime of the assured.

This policy has been contracted for by the said Grover C. Ealy, Gustav Heinrich Nieman and Oney S. Riggs, as Trustees under Trust Agreement dated the tenth day of July 1943 (the owners).

All amounts payable or receivable hereunder shall be paid in lawful currency of the United States of America.

The Provisions and Privileges printed or written by the Company on the following pages form part of the contract and are binding on both parties thereto.

Signed and Sealed at Montreal, this seventeenth

day of November, one thousand nine hundred and forty-three.

[Seal]      /s/ Arthur B. Wood,  
                 President and Managing Director  
                 /s/ F. G. Cunningham, Secretary

Countersigned: [Illegible]

Whole Life Policy—Assurance Payable at Death—  
Annual Dividends. Premiums Payable for Life  
Unless Dividends Applied to Decrease Number  
of Premium Payments. War and Aviation Pro-  
vision.

\* \* \* \* \*











## EXHIBIT No. 14

## Stock Sale Agreement

This Agreement made and entered into this 20th day of September, 1947, by and between James A. Brown, as executor under the Will of G. C. Ealy, deceased, party of the first part, hereinafter called the "Seller" and Gus H. Nieman, Thos. F. Doran, Oney S. Riggs, John W. Macdonald and G. B. Halverson, parties of the second part, hereinafter called the "Buyers", Witnesseth:

That the seller as executor under the will of G. C. Ealy, deceased, is the owner of 1598 shares of the capital stock of Inland Motor Freight, a corporation, organized under the laws of the State of Washington with its principal place of business at Spokane therein, together with  $16\frac{1}{2}$  shares of the capital stock of Inland Terminals, Inc., and  $16\frac{1}{2}$  shares of the capital stock of Inland Pacific Service, Inc.,

Now Then, It Is Agreed that the Seller will sell, and the Buyers will buy all of the aforesaid

1598 shares of the common stock of Inland Motor Freight, together with the  $16\frac{1}{2}$  shares of the common stock of Inland Terminals, Inc., and  $16\frac{1}{2}$  shares of the common stock of Inland Pacific Service, Inc.,

for the sum of Ninety Dollars (\$90.00) per share for the 1598 shares of the Inland Motor Freight stock, and without additional compensation for the Inland Terminals stock or Inland Pacific Service

stock. The value of the said Inland Terminals stock and the Inland Pacific Service stock is reflected and included in the aforesaid \$90.00 per share of Inland Motor Freight stock.

The total price for the aforesaid stock being the sum of One Hundred Forty-Three Thousand Eight Hundred Twenty and no/100 Dollars (\$143,820.00) payable as follows, to-wit:

Fifty Thousand Dollars (\$50,000.00) in cash upon the signing of this agreement, and upon receipt of the same, a copy of this agreement, together with all of the aforesaid stock shall be lodged in escrow with a Bank in the City of Spokane, Washington, all of said stock being duly endorsed; the balance of the purchase price, to-wit: \$93,820.00 to be paid as follows, to-wit:

\$10,000.00 or more on September 1st, 1948 and a like sum of \$10,000.00 or more on the 1st day of September each year until the full sum shall have paid with interest on deferred principal at the rate of three per cent (3%) per annum payable at the same time principal payments are made and in addition thereto.

It Is Agreed that the buyers may pay any additional sum on account of said purchase price at any time after January 2nd, 1948, and prior to its maturity.

This contract is subject to the approval of the Superior Court of Spokane County, Washington.

The escrow holder of this contract is directed to

pay the money to the seller as received and when the said contract is fully paid to deliver the stock to Buyers.

Time is the essence of this agreement, and if the Buyers fail or refuse to make the payments as herein contained, or should they fail or refuse to do anything herein made necessary for them to do and within the time therefor, then the seller may at his option cancel this contract, repossess said stock and retain all payments made hereunder, Provided that no forfeiture of this contract shall be made until after thirty days written notice shall have been given the Buyers by the Seller and the thing complained of not made good in the meantime.

Witness our hands this day and year first above written.

James A. Brown, as executor under the Will of G. C. Ealy, deceased, Seller"

Gus H. Nieman

G. B. Halverson

John W. Maedonald

Thomas F. Doran

Oney S. Riggs

[Endorsed]: T.C.U.S. Lodged Aug. 29, 1955. Filed Aug. 29, 30, 1955.

T. C. Memo. 1956-121

The Tax Court of the United States

Docket Nos. 51871-51874, 51877-51880

Thomas F. Doran, et al.,<sup>1</sup> Petitioners, vs. Commissioner of Internal Revenue, Respondent.

Filed May 18, 1956

## MEMORANDUM FINDINGS OF FACT AND OPINION

Roy E. Lowe, Esq., for the petitioners.

Gordon N. Cromwell, Esq., for the respondent.

Withey, Judge: The Commissioner has determined a deficiency in income tax of the petitioners for 1947 as follows:

Petitioner	Docket No.	Deficiency
Thomas F. Doran	51871	\$ 884.56
Ethel M. Doran	51872	922.06
Oney S. Riggs	51873	854.74
Dorothy F. Riggs	51874	854.74
Ida Bee MacDonald	51877	984.25
Clara Nieman	51878	5,582.16
Gus H. Nieman	51879	5,491.91
John W. MacDonald	51880	984.25

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<sup>1</sup> The proceedings of the following petitioners are consolidated herewith: Ethel M. Doran, Docket No. 51872; Oney S. Riggs, Docket No. 51873; Dorothy F. Riggs, Docket No. 51874; Ida Bee MacDonald, Docket No. 51877; Clara Nieman, Docket No. 51878; Gus H. Nieman, Docket No. 51879; and John W. MacDonald, Docket No. 51880.

The issue for decision is whether petitioners as stockholders of a corporation received taxable dividend distributions by the application on the purchase price of stock in that corporation for their accounts of the proceeds of a life insurance policy, the premiums upon which had been paid by the corporation.

### Findings of Fact

All the stipulated facts are found accordingly. These cases have been consolidated for trial and opinion.

At all times material herein the following petitioners were and still are husband and wife: Thomas F. Doran and Ethel M. Doran; Oney S. Riggs and Dorothy F. Riggs; John W. MacDonald and Ida Bee MacDonald; and Gus H. Nieman and Clara Nieman. Each petitioner filed his or her separate individual income tax return for 1947 with the collector of internal revenue at Tacoma, Washington.

Inland Motor Freight, hereinafter referred to as Inland, is a Washington corporation with its principal office in Spokane. During the year at issue it was a public carrier of freight and commodities for hire. All of the husband-petitioners herein and Grover C. Ealy had been since 1943, and continued to be in 1947, stockholders and actively engaged in the operations and management of Inland. Ealy died on March 19, 1947. All were members of the board of directors. Ealy was principal stockholder and president of Inland at his death. There were in addition four other stockholders not involved in this controversy.



Prior to July 3, 1943, informal discussion among Inland's stockholders began concerning the accumulation of a fund for the purchase of the stock of any deceased stockholder for the surviving stockholders. A special stockholders' meeting was held on that date at which it was formally resolved that Inland "purchase and pay for" insurance upon the lives of certain of its stockholders as follows:

G. C. Ealy	\$50,000
G. H. Nieman	35,000
Oney S. Riggs	10,000
J. W. MacDonald	10,000
T. F. Doran	10,000
G. B. Halverson	10,000

and

that a contract be worked out among the stockholders whereby this insurance should be purchased, the premiums to be paid by the company and upon the death of either of those insured, the face of the policy on the one so deceased should be paid to the company and disbursed by the company to all of the stockholders as a special dividend and the proceeds received by said stockholders as a special dividend to be used by them to apply on the purchase of the stock in the Inland Motor Freight of the one so deceased.

In pursuance of the resolution, Inland, on July 14, 1943, made application to a life insurance company for the issuance of an insurance policy upon the life of Ealy in the face amount of \$50,000, it being requested that Ealy's estate be the beneficiary.



Similar applications were also made with respect to the other stockholders in accordance with the referred to corporate resolution. The insurance company, refusing to issue the policies with proceeds payable to the estates of the respective assureds, issued in lieu thereof policies which were payable to Inland on the death of the insured. Inland's officers refused to accept such policies and, on October 25, 1943, a special meeting of the board of directors was held at which it was resolved that Inland "purchase said insurance" in the manner set forth in a contract entered into by and between the majority of the stockholders, dated July 10, 1943.

The contract of July 10, 1943, provided that the president, vice-president, and secretary and treasurer of Inland, who were G. C. Ealy, Gus H. Nie-man and O. S. Riggs, respectively, were authorized and directed as trustees to apply for and obtain the designated life insurance with themselves, as trustees, named the beneficiaries thereof, and with Inland to pay the premiums thereon; and that, upon the death of any insured, the proceeds of the policy insuring his life be collected by the trustees and distributed by them to the surviving stockholders of record at the time of such death in proportion to their stock ownership. It was further there provided that

said proceeds when distributed may be used by the then stockholders to purchase the common stock in the company held by the one so deceased at the time of his death.

Each of the signatories to the contract and their respective wives further agreed that upon the death of any of them the Inland common stock then owned by the deceased would be offered for sale at book value to the surviving stockholders for a period of 90 days.

On December 20, 1943, an application was made by the trustees for life insurance upon the lives and in the amounts above listed. In due course the policies were issued and delivered to the three trustee-beneficiaries. Upon the death of Ealy on March 19, 1947, petitioner, Gus Nieman, was elected president of Inland, petitioners, J. W. MacDonald and Thomas Doran, were elected vice-presidents, and the three with petitioner, Oney Riggs, then became the trustees under the terms of the July 10, 1943, agreement. As such, they received the proceeds of the policy of insurance upon the life of Ealy in the amount of \$50,785.30.

The executor of Ealy's estate entered into negotiation with the surviving signatories of the July 10 agreement for the sale and purchase of the Inland stock belonging to Ealy at his death. The negotiations resulted in a written agreement by the terms of which such stock was sold to Gus Nieman, Thomas Doran, Oney Riggs, John MacDonald and G. B. Halverson at a sale price of \$143,820. A down payment of \$50,000 was made to the seller by the trustees by endorsement to him of the check which represented the proceeds of Ealy's life insurance. In accordance with the sales agreement the stock

was forthwith deposited with an escrow agent to await completion of payment of the purchase price at which time the stock was to be delivered to the above-named purchasers. As members of the marital community consisting of the various petitioner-husbands and -wives, the communities were bound by and received the benefits of the stock purchase agreement, and, in accordance with the community property law of Washington, the respondent has determined deficiencies against the petitioner-wives as well as their husbands.

All premiums upon the policy of life insurance here involved covering the life of Ealy were paid by Inland directly to the issuing insurance company and were charged against surplus on Inland's books. No income tax deduction was at any time taken or claimed by Inland for the payment of such premiums. No charge to Ealy was made upon the corporation's books for such premium payments and none of Inland's shareholders have reported such premium payments as dividends. The corporation did not claim or receive dividends on any of the policies of insurance here involved and did not carry the policies as an asset upon its books, either as to accrued dividends or cash surrender value. The corporation at no time physically received the proceeds of the insurance upon the life of Ealy.

In making application for the policy of insurance upon the life of Ealy and in claiming, receiving and disbursing the proceeds thereof at Ealy's death, the trustees were acting for and in behalf of Inland.

## Opinion

Petitioners contend that Inland has never become the owner or possessor of the proceeds of the insurance on the life of its one-time president and principal stockholder, Grover C. Ealy, and that it, therefore, follows the corporation could not and did not distribute such proceeds to petitioners. Their contention is predicated upon the proposition that the stockholders, as individuals, have contracted with each other with respect to the application for such life insurance, the claim for the proceeds thereof, the receipt of the proceeds and the purchase of the deceased's Inland stock for the benefit of petitioners and that Inland was not a party to that contract. We are not impressed with their contention.

Careful consideration of the minutes of the stockholders' meeting of July 3, 1943, the application for insurance upon the life of Ealy, the minutes of the board of directors' meeting of October 25, 1943, and the stockholders' contract, wherein it was agreed such insurance should be obtained and, in case of the death of an insured, the disposition of the proceeds of such insurance, amply justify our finding of fact that the trustees, in applying for the insurance and in receiving and disbursing the proceeds thereof, were acting for and in behalf of Inland. They were its agents for those purposes and did not represent the stockholders as individuals.

It follows that Inland received the proceeds of

the Ealy policy which, although not representing income in its hands, *United States vs. Supplee-Biddle Hardware Co.*, 265 U.S. 189, did represent income to petitioners, its stockholders, when distributed to them through the purchase of stock for their benefit, *Isaac May*, 20 B.T.A. 282. The record does not disclose the earnings and profits of the corporation at the time of purchase of Ealy's Inland stock by the trustees, but such earnings are presumed to be adequate for that purpose under the provisions of section 115(b) of the Internal Revenue Code of 1939 in the absence of proof to the contrary.

Respondent has increased the taxable income of each petitioner by an amount which represents a proportion of the amount expended by the trustees for the purchase of Ealy's Inland stock which is in exact ratio to their stock interests in Inland. We hold he has properly done so.

Decisions will be entered for the respondent.

Served May 22, 1956. Entered May 22, 1956.



The Tax Court of the United States  
Washington

Docket No. 51871

THOMAS F. DORAN,                      Petitioner,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, filed May 18, 1956, it is

Ordered and Decided: That there is a deficiency in income tax in the amount of \$884.56 for 1947.

[Seal]            /s/ G. G. WITHEY,  
Judge

Entered May 18, 1956. Served May 22, 1956.

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The Tax Court of the United States  
Washington

Docket No. 51872

ETHEL M. DORAN,                      Petitioner,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, filed May 18, 1956, it is





The Tax Court of the United States  
Washington

Docket No. 51874

DOROTHY F. RIGGS,                      Petitioner,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, filed May 18, 1956, it is

Ordered and Decided: That there is a deficiency in income tax in the amount of \$854.74 for 1947.

[Seal]            /s/ G. G. WITHEY,  
Judge

Entered May 18, 1956. Served May 22, 1956.

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The Tax Court of the United States  
Washington

Docket No. 51877

IDA BEE MacDONALD,                      Petitioner,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the determination of the Court, as



The Tax Court of the United States  
Washington

Docket No. 51879

GUS H. NIEMAN, Petitioner,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, filed May 18, 1956, it is

Ordered and Decided: That there is a deficiency in income tax in the amount of \$5,491.91 for 1947.

[Seal]        /s/ G. G. WITHEY,  
Judge

Entered May 18, 1956. Served May 22, 1956.

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The Tax Court of the United States  
Washington

Docket No. 51880

JOHN W. MacDONALD, Petitioner,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the determination of the Court, as

set forth in its Memorandum Findings of Fact and Opinion, filed May 18, 1956, it is

Ordered and Decided: That there is a deficiency in income tax in the amount of \$984.25.

[Seal]            /s/ G. G. WITHEY,  
                         Judge

Entered May 18, 1956. Served May 22, 1956.

In the United States Court of Appeals  
for the Ninth Circuit

Tax Court Docket No. 51871

THOMAS F. DORAN,                      Petitioner,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

# PETITION FOR REVIEW

The taxpayer, the petitioner in this cause, by R. E. Lowe, counsel, hereby files his petition for a review by the United States Court of Appeals for the Ninth Circuit of a decision by the Tax Court of the United States rendered on May 18, 1956 (T. C. Memo 1956-121) determining deficiencies in the petitioner's Federal income tax for the calendar year 1947 in the amount of \$884.56, and respectfully shows:

1. That Petitioner taxpayer is a citizen and resident of the State of Washington, and that the

petitioner's income tax return for the year 1947 was filed with the Collector (now District Director) of Internal Revenue at Tacoma, Washington, which is located in the Ninth Circuit.

## 2. Nature of the Controversy.

The controversy involves the proper determination of the petitioner's liability for income taxes for the calendar year 1947. From the period 1943 through 1947, petitioner and G. C. Ealy, G. H. Nie-man, Oney S. Riggs, J. W. MacDonald, and G. B. Halverson were stockholders and members of the Board of Directors of Inland Motor Freight, hereinafter referred to as "Inland," a Washington corporation. Pursuant to a contract signed by taxpayer and other stockholders of Inland, and resolutions by the stockholders of Inland, trustees were appointed who applied for insurance on the lives of the officers and directors of the corporation. Under the terms of the agreement and resolutions, each stockholder and his wife agreed to offer his or her stock upon death of such stockholder to the remaining stockholders; and the insurance proceeds were to be available for use in purchasing the decedent's stock. Inland paid all premiums on the insurance policies.

In 1947 the president, G. C. Ealy, died and the insurance proceeds of \$50,000 taken on his life were paid to the trustees, who then, pursuant to an agreement between the remaining officers and directors of Inland and the executor of the estate of G. C. Ealy, paid the said \$50,000 to the estate of G. C.



Ealy as a down payment on the purchase of his stock for the benefit of the remaining officers and directors.

Petitioner did not report any part of the policies as income in the year 1947. Petitioner contends that his proportion of the proceeds of the insurance policy on the life of G. C. Ealy did not constitute income; that such proceeds were received by petitioner or by trustees for and on his behalf, and as proceeds of an insurance policy are exempt from income taxes. The Respondent, Commissioner of Internal Revenue, contends, and the Tax Court held, that the insurance policy and the proceeds thereof were the property of Inland Motor Freight and that such proceeds were distributed by the corporation to petitioner stockholders by the purchase of stock for petitioner's benefit.

3. The said taxpayer, being aggrieved by the findings of fact and conclusions of law contained in the said findings and opinion of the tax court, and by its decision entered pursuant thereto, desires to obtain a review thereof by the United States Court of Appeals for the Ninth Circuit.

/s/ R. E. LOWE,

Counsel for Petitioner

Duly Verified.

[Endorsed]: T.C.U.S. Filed July 23, 1956.

[Title of U. S. Court of Appeals and Cause.]

## NOTICE OF FILING PETITION FOR REVIEW

To: John P. Barnes, Chief Counsel, Gordon N. Cromwell, Counsel, Bureau of Internal Revenue, Washington, D. C.

You are hereby notified that the petitioner on the 23rd day of July, 1956, filed with the Clerk of the Tax Court of the United States at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court of the United States heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and is served upon you.

Dated at Spokane, Washington, this 23rd day of July, 1956.

Respectfully submitted,

/s/ R. E. LOWE,  
Counsel for Petitioner

Acknowledgment of Service attached.

[Endorsed]: T.C.U.S. Filed July 26, 1956.

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[Title of U. S. Court of Appeals and Cause.]

## STATEMENT OF POINTS

Now comes Thomas F. Doran, the petitioner herein, by his attorney, R. E. Lowe, and hereby asserts the following errors which he intends to

urge on review by the United States Court of Appeals for the Ninth Circuit from the decision of the Tax Court of the United States rendered in the above case on May 18, 1956.

1. The Tax Court erred in making the following finding:

“In making application for the policy of insurance upon the life of Ealy, and in claiming, receiving, disbursing the proceeds thereof at Ealy’s death, the Trustees were acting for and in behalf of Inland.”

2. The Tax Court erred in the portion of its opinion which reads as follows:

“It follows that Inland received the proceeds of the Ealy policy which, although not representing income in its hands (U. S. vs. Supplee-Biddle Hardware Co., 265 U.S. 189) did represent income to petitioners, its stockholders, when distributed to them through the purchase of stock for their benefit (Isaac May, 20 BTA 282).

3. The Tax Court erred in determining in its opinion the following:

“Respondent has increased the taxable income of each petitioner by an amount which represents a proportion of the amount expended by the trustees for the purchase of Ealy’s Inland stock, which is in exact ratio to their stock interests in Inland. We hold he has properly done so.”

4. The Tax Court erred in its opinion entered May 18, 1956, determining that:

“Decision will be entered for the respondent.”

5. The Tax Court erred in rendering its decision dated May 18, 1956, which ordered and decided that there is a deficiency in income tax in the amount of \$884.56 for 1947.

/s/ R. E. LOWE,  
Counsel for Petitioner

[Endorsed]: T.C.U.S. Filed July 23, 1956.

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The Tax Court of the United States

Docket Nos. 51871-51874, 51877-51880

[Title of Causes.]

### CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States do hereby certify that the foregoing documents, 1 to 70, inclusive, constitute and are all of the original papers and proceedings as called for by the "Designations of Contents of Record on Review" and "Designation for Additional Portions for Record on Review" including joint exhibits 1-A through 8-H, petitioners' exhibits 9 through 14, attached to stipulation of facts, on file in my office as the original and complete record in the proceedings before the Tax Court of the United States docketed at the above numbers and in which the petitioners in the Tax Court proceeding have initiated appeals as above numbered and entitled, together with a true copy of the docket entries in

said Tax Court proceedings, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 14th day of August, 1956.

[Seal]            /s/ HOWARD P. LOCKE,  
Clerk, Tax Court of the United  
States

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[Endorsed]: No. 15250. United States Court of Appeals for the Ninth Circuit. Thomas F. Doran, Ethel M. Doran, Oney S. Riggs, Dorothy F. Riggs, Ida Bee MacDonald, Clara Nieman, Gus H. Nieman and John W. MacDonald, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petitions to Review Decisions of The Tax Court of the United States.

Filed: August 27, 1956. Docketed: September 4, 1956.

                  /s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.



In the United States Court of Appeals  
for the Ninth Circuit

No. 15250

THOMAS F. DORAN, ETHEL M. DORAN,  
ONEY S. RIGGS, DOROTHY F. RIGGS, IDA  
BEE MacDONALD, CLARA NIEMAN, GUS  
H. NIEMAN, JOHN W. MacDONALD,

Petitioners, on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent, on Review.

PETITIONERS' STATEMENT OF POINTS  
AND DESIGNATION OF RECORD

Petitioners, by their attorneys, hereby designate under Rule 17 of the Rules of Practice of the United States Court of Appeals for the Ninth Circuit, all items designated in Petitioners' Designation of Contents of Record on Review (Document Nos. 62-69, inclusive), together with Respondent's Designation for additional portions for the records on review (Document No. 70), with the exception of Item No. 1, Joint Exhibits 1-A, 2-B, 3-C, 4-D, 5-E, 6-F, 7-G, and 8-H, which Item No. 1 Petitioner does not designate. Such designations appear in the typewritten Transcript of Record under document numbers set forth above.

Petitioners also adopt their respective Statements



of Points appearing in the typewritten Transcript of Record (Documents Nos. 54-61, inclusive).

/s/ R. E. LOWE,

/s/ ALAN P. O'KELLY,

Attorneys for Petitioners on  
Review

Certificate of Service attached.

[Endorsed]: Filed September 5, 1956. Paul P. O'Brien, Clerk.

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[Title of U. S. Court of Appeals and Cause.]

### MOTION TO CONSOLIDATE

Come now the petitioners and move that the above-named proceedings be consolidated for the purpose of printing the record, filing briefs, argument, and opinion, and respectfully show:

That the above cases were consolidated for hearing before the Tax Court of the United States;

That the Tax Court of the United States in TC Memo 56-121 issued a consolidated Memorandum of Findings of Fact and Opinion and then issued separate formal decisions in each case individually;

That each of the above cases involves an identical issue of law arising out of identical facts and circumstances.

Dated at Spokane, Washington, this 4th day of September, 1956.

Respectfully submitted,

/s/ R. E. LOWE,

/s/ ALAN P. O'KELLY,

Counsel for Petitioners

Certificate of Service attached.

[Endorsed]: Filed September 5, 1956. Paul P. O'Brien, Clerk.

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[Title of U. S. Court of Appeals and Cause.]

### STIPULATION

It is hereby stipulated by and between the parties hereto:

1. That each of the proceedings consolidated herein for the purpose of printing the record, filing briefs, argument, and opinion involves an identical issue of law arising out of identical facts and circumstances.

2. That the pleadings and petitions for review in each of the cases are identical in all material respects, with the exception of the amount of the tax involved which is not in dispute and not in issue.

3. That in printing the record the Clerk may print one set of pleadings, one opinion, and one petition for review, and that a similar set of pleadings was filed on behalf of all other named petitioners, and similar petitions for review were filed on behalf of all other named petitioners.

Dated this..... day of ....., 1956.

/s/ R. E. LOWE,

/s/ ALAN P. O'KELLY,

Attorneys for Petitioners

/s/ CHARLES K. RICE,

Assistant Attorney General,

Attorney for Respondent

[Endorsed]: Filed Oct. 3, 1956. Paul P. O'Brien,  
Clerk.

